

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

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**IN THE MATTER OF:**

**CLINTON COUNTY BIO ENERGY, LLC.**  
Clinton County, Iowa

**ADMINISTRATIVE CONSENT ORDER**  
**NO. 2008-WW- 16**

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**TO: Robert Holesinger**  
**Registered Agent**  
**Clinton County Bio Energy, LLC**  
**341 17<sup>th</sup> Ave. S**  
**Clinton IA 52732**

**I. SUMMARY**

Pursuant to this Administrative Consent Order (Order), Clinton County Bio Energy, LLC hereby agrees to comply will all storm water discharge permit requirements and to pay penalties as set forth herein.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Terry Jones  
Field Office #6  
1023 W. Madison  
Washington Iowa 52353-1623  
Ph: 319-653-2135

**Relating to this Order:**

Jon C. Tack  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8889

**Payment of penalty to:**

Iowa Dept. of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Clinton County Bio Energy, LLC is a renewable fuels facility producing biodiesel and glycerin. The production process does not use water and thus does not generate process wastewater. Domestic wastewater is treated in an on-site system. The site is covered by NPDES Storm Water General Permit No. 1 pursuant to authorization issued on March 16, 2006. Storm water at the site is collected and land applied. Storm water draining to the east of the site goes to the fire pond and water draining from the west of the site goes to a small retention area on the southwest corner of the property. Storm water also collects in four sump areas. Two sumps are located in dikes around the glycerin and methanol aboveground storage tanks (ASTs). Another sump is located under the distillation unit and a fourth sump is located under a loading area on the north side of the facility.

2. On May 22, 2007, the Department received a complaint in regard to storm water from the Clinton County Bio Energy, LLC facility draining onto the complainant's property.

3. On June 4, 2007, the Department investigated the complaint against Clinton County Bio Energy, LLC. The Department observed a white milky liquid pooled around the glycerin AST sump area and free-phase soy oil pooled in ruts in the drainage areas to the southwest of the facility. Dan Holesinger, Project Manager for Clinton County Bio Energy, LLC, indicated that facility personnel had pumped liquid out of the AST sump containment area onto the ground because of heavy rain. The Department required Clinton County Bio Energy, LLC to collect water samples, cease pumping storm water from containment structures, provide a plan-of-action detailing steps to prevent similar events in the future, and to submit a copy of the Pollution Prevention Plan (PPP) for the site. Water samples were collected from a culvert under 44<sup>th</sup> Avenue South, which drains from the Clinton County Bio Energy, LLC site.

4. On June 12, 2007, the Department received a plan-of-action from Clinton County Bio Energy, LLC. The plan-of-action detailed methods designed to prevent the future release of contaminated storm water.

5. On June 18, 2007, the Department received test results from the water samples taken on June 4, 2007. The results indicate elevated concentrations of oil & grease and an elevated biochemical oxygen demand (BOD<sub>5</sub>).

6. On June 28, 2007, the Department issued a Notice of Violation to Clinton County Bio Energy, LLC based upon the results of the inspection on June 4, 2007. The Notice cited Clinton County Bio Energy, LLC for the illegal discharge of wastewater and for the failure to have an appropriate PPP.

7. On July 11, 2007, Clinton County Bio Energy, LLC notified the Department that its existing PPP was related to construction of the site for purposes of Storm Water General Permit No. 2, rather than operation of the facility pursuant to Storm Water General Permit No. 1 and that a new PPP would be developed.

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8. On July 19, 2007, the Department received a PPP from Clinton County Bio Energy, LLC. The PPP was dated September 5, 2005. The Department reviewed the PPP. It was determined that the purportedly updated PPP was a PPP for construction activities as required by Storm Water General Permit No. 2, rather than for operation of the facility pursuant to Storm Water General Permit No. 1.

9. On July 19, 2007, Clinton County Bio Energy, LLC was notified that a PPP for operation of the facility was required and directed that an appropriate PPP be submitted to the Department by September 1, 2007.

10. The Department has asserted that Clinton County Bio Energy, LLC had not submitted an appropriate PPP to the Department. Clinton County Bio Energy, LLC asserts that the previously submitted PPP is applicable to Storm Water General Permit No. 1.

**IV. CONCLUSIONS OF LAW**

The Department and Clinton County Bio Energy, LLC agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for stormwater discharges. The Commission has adopted regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for stormwater discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.

2. Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(1) adopts Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary.

3. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. Clinton County Bio Energy, LLC has violated this provision.

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4. General Permit No. 1, Part III (A), limits the authorized discharges for a covered facility to only storm water. Clinton County Bio Energy, LLC has violated this provision of the permit.

5. General Permit No. 1, Part III (C), provides that the permittee must develop and implement a PPP in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. At the time of the discharges described in this Order, Clinton County Bio Energy, LLC had not developed or implemented a PPP related to the operation of the facility.

**V. ORDER**

The Department hereby orders and Clinton County Bio Energy, LLC agrees to comply with all storm water permit requirements and:

1. By April 15, 2008, Clinton County Bio Energy, LLC shall submit an updated PPP as required by Storm Water General Permit No. 1.
2. At the time of execution of this Order, Clinton County Bio Energy, LLC shall pay an administrative penalty in the amount of \$7,000.

**VI. PENALTY**

1. Iowa Code sections 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. Criminal sanctions are also provided for discharge violations.

2. Iowa Code Section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. The penalty assessed by this Order is determined as follows:

a. Economic Benefit. Clinton County Bio Energy, LLC has realized an economic benefit as a result of the violations documented in this Order. Costs avoided include costs related to the collection and disposal of storm water and construction of increased storage capacity to avoid the release of contaminated storm water. Based upon these facts, \$3,000 is assessed for economic benefit.

b. Gravity of the Violations. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As

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indicated above, substantial civil penalties are authorized by statute in this case. The Department has determined that the most effective and efficient means of addressing the above-cited violations is with administrative penalties, which are much lower than those that could be obtained through court action. The storm water permit program requires that best management practices be implemented at all regulated sites in order to prevent the release of contaminants into the waters of the state. The Department has documented an actual and intentional release of contaminants into a water of the state in this case. Elevated BOD5 results in the depletion of oxygen in water and is harmful to aquatic life. Based upon these facts, \$2,000 is assessed for the gravity of the violations documented in this Order.

c. Culpability. Clinton County Bio Energy, LLC failed to implement a PPP for the operation of the facility. This failure to fully implement best management practices to prevent the release of contaminants can be viewed as a significant contributing factor to explain why employees of Clinton County Bio Energy, LLC chose to intentionally pump contaminated waste water from the containment structures on the site. The fact that the release was intentional, rather than accidental is also a contributing factor in the assessment of the culpability of Clinton County Bio Energy, LLC. Based upon these factors, the multiple days of violation, and the agreement of the parties, \$2,000 is assessed for the culpability of Clinton County Bio Energy, LLC.


## **VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference at 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Clinton County Bio Energy, LLC. By signature to this Order, all rights to appeal this Order are waived.

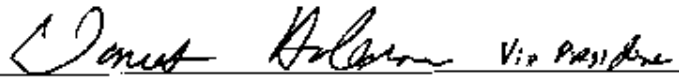
## **VIII. NONCOMPLIANCE**

Compliance with all provisions contained in section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 16 day of  
May, 2008

  
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JANET HOLMAN, VICE PRESIDENT  
CLINTON COUNTY BIO ENERGY, LLC

Dated this 1 day of  
April, 2008

Field Office #6; Jon Tack; I.C(1); I.C(7)(b)